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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2006 MAR -2 P 2:00

U.S. DISTRICT COURT
DISTRICT OF MASS.

UNITED STATES OF AMERICA)

)

)

vs

)

CRIMINAL NO. 05-30002-MAP

)

FRANK DEPERGOLA and)

ARMANDO BOTTA)

Defendants)

AFFIDAVIT OF ATTORNEY MICHAEL L. FOY IN SUPPORT OF MOTION TO
CONTINUE TRIAL DATE

I, Michael L. Foy, being duly sworn, say and depose as follows:

1. I am attorney of record for the Defendant, Frank Depergola and am therefore familiar with the facts and circumstances of this case;
2. The above referenced criminal matter is scheduled for trial commencing on March 20, 2005.
3. Counsel is requesting a continuance for the following reasons:
 - a. On February 9, 2006, I underwent spinal surgery, more specifically, fusion of C-5, C-6 and C-7. Also, the removal of several bone spurs causing nerve impingement was done. The surgery was performed by Dr. Brian Kwon at New England Baptist Hospital, Boston, MA.
 - b. I was discharged on Monday, February 13, 2006. I was instructed to remain out of work and continue on a pain management program that consists of taking narcotic pain medication every 3-4 hours. Taking this medication makes it very difficult to concentrate or work at any capacity and therefore would hinder the preparation of this trial and make it impossible to try this case feeling as I do at present.

- c. I was informed by my surgeon that I will experience different degrees of pain for several months. At present I am experiencing considerable pain at times but I do get some relief from the medication.
- d. I am also still feeling the effects of the anesthesia which is very common, particularly after a long surgery. My surgery lasted 5 1/2 hours. I also experience periods of depression which is a common side effect. I have been very forgetful also.
- e. My surgeon has instructed me not to return to work until my post surgical assessment is completed which is scheduled for March 15, 2006. See attached.
- f. I do not feel that my post surgical condition, allows me to adequately prepare this case for trial and represent my client to the best of my ability.
- g. Mr. Depergola has no objection to the issuance of an order of excludable delay under the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A) for the period of time from the date of any order continuing the trial until the date of such trial.

Sworn and subscribed to under the pains and penalties of perjury this 2nd day of March, 2006.



Michael L. Foy



THE BOSTON SPINE GROUP, P.L.C.

Located at The Spine Center
New England Baptist Hospital
125 Parker Hill Avenue, Boston, Massachusetts 02120

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U.S. DISTRICT COURT
DISTRICT OF MASS.

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Physicians

Robert J. Banco, MD
Chief, Spine Service
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Mark A. Finno, MD
Louis G. Jents, MD
David H. Kim, MD
Brian Kwon, MD
Frank F. Rand, MD
Kevin P. Sullivan, MD
Scott G. Trommhauser, MD
Eric J. Wondard, MD

March 1, 2006

RE: Michael Foy

DOB: 3/24/49

To Whom It May Concern:

This letter is to confirm that Michael Foy underwent spine surgery on February 9, 2006. Due to the extent of his surgery, Mr. Foy has absolutely no work capacity at this time. He will be evaluated on March 15th, at which point further assessment will be made as to when Mr. Foy might be physically able to return to work. It is likely that Mr. Foy will need to be out of work following this post-operative appointment as well, but depending on the assessment of his recovery he may be able to return to work with strict restrictions.

Again, you will be updated on Mr. Foy's prognosis following his appointment on March 15th. Please don't hesitate to contact my office with any questions or concerns.

Sincerely,

Brian Kwon, M.D.

Affiliated Services

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